IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO No.3 of 2004

Decided on:November 23, 2006

H.R.T.C. **…..Appellant.**

VERSUS

Moti Ram & Anr. **…..Respondents.**

Coram

The Hon'ble Mr.Justice Surjit Singh, Judge.

Whether approved for reporting?[1]No

For the Appellant: **Mr.Raman Sethi, Advocate.**

For Respondent No.1: **Mr.Shashi Shirshoo, Advocate.**

Surjit Singh, Judge (Oral).

Heard and gone through the record.

2. This appeal, by the H.R.T.C. in its capacity as the owner of the bus, is directed against the award of Motor Accident Claims Tribunal, whereby a sum of Rs.2,48,717/-, together with interest at the rate of 9% per annum, has been awarded to respondent Moti Ram by way of compensation on account of injury to his leg, which has resulted in amputation of the leg and permanent disability to the extent of 70%.

3. The award has been challenged on two grounds, namely, the evidence on record does not prove that the bus of the appellant

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[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? No***

was involved in the accident and secondly that the compensation awarded by the Tribunal is excessively on the higher side.

4. Respondent / claimant Moti Ram appeared as PW-1 and stated, in no uncertain terms, that when he was boarding the bus and had just placed his one foot on the step of the front window, the driver put the bus into motion as a result of which he fell and the rear tyre of the bus passed over his foot resulting in crush injury and that to save his life the doctors have amputated his leg. In the cross-examination, it was suggested to him that he was moving by the side of the road in a drunken state when a Maruti Van, which came from the opposite direction, hit him. Cross-examination, on these lines, was conducted by the counsel representing the driver of the bus. When the driver himself stepped into the witness box and made statement as RW-1, he stated that he did not know which vehicle caused the accident resulting in the injury to the leg of the respondent. This statement is clearly in contradiction with the suggestions, which the counsel for RW-1 made to the claimant / respondent in the course of his cross-examination.

5. The above stated position apart, the respondent / claimant stated very categorically that a light vehicle was engaged by the Adda Incharge of the appellant on payment of Rs.1200/- for carrying him to the hospital at Shimla. Now, if the bus of the appellant were not involved in the accident, as alleged by it, why should have its Adda Incharge engaged a light motor vehicle on payment of Rs.1200/- as fare for bringing the respondent to hospital at Shimla.

6. In view of the above stated position, I find no merit in the contention that the evidence on record does not prove the assertion made in the claim petition that the accident occurred due to rash or negligent driving of the bus by its driver, namely, respondent Bhagat Ram.

7. As regards the second ground, the Tribunal has awarded a sum of Rs.2,48,717/- only. The learned counsel says that the compensation awarded on account of actual loss of earning i.e. Rs.5000/- and on account of diminishion of future prospects i.e. Rs.2,01,600/- is on the higher side especially when the age of the claimant was 60 years when the accident took place and his income was not much as has been assumed by the Tribunal. Even if it be assumed that respondent Moti Ram was aged 60 years at the time, when the accident took place, and his income was not as much, as is assumed by the Tribunal, as is canvassed by the learned counsel for the appellant, the award shows that the compensation awarded on account of attendant's charges, i.e. Rs.3000/- only, and on account of pain and suffering and loss of amenities of life, i.e. Rs.20,000/- only, is grossly on the lower side. Admittedly, the injury has resulted in amputation of leg leading to 70% permanent disability. Therefore, the compensation on account of pain and suffering and loss of amenities of life could not have been less than Rs.1,00,000/- and similarly compensation awarded for attendant charges could have also been much higher than the amount awarded by the Tribunal. Therefore, the

total amount of compensation awarded by the Tribunal, i.e. Rs.2,48,717/-, cannot be said to be excessive.

8. For the foregoing reasons, the appeal is dismissed.

(Surjit Singh)
Judge.

November 23, 2006
(soni)